DRAFT BILL FOR RECORDS OF NATIONAL IMPORTANCE

SHORT TITLE OF THE ACT.

"Records of National Importance Act....."

LONG TITLE OF THE ACT.

A Bill to regulate the export of records of national importance which are less than 75 years old to provide for the compulsory acquisition of records of national importance which are less than 75 years old for preservation in public institutions, to provide for the prevention of unwarranted destruction and smuggling of and fraudulent dealing in records, to provide for registration of records of national importance whether they are more than 75 years old or not and to provide for certain other matters connected therewith or incidental or ancillary thereto.

1 (1) This Act may be called the Records of National Importance Act.....

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into the force of that provision.

2. Definitions:

(1) In this Act unless the context otherwise requires:-

(a) "Records" mean -
any document, manuscript pamphlet, tract, book, photograph, picture, microfilm, microfitche, sound recordings, drawing, map, codex, register, ledger, or other document of any physical form or character or any copy thereof.

(b) "export" means taking out of India to a place outside India.

(c) "Registering Officer" means an officer appointed as such under section 17.

(d) "prescribed" means prescribed by rules made under this Act.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area be construed as a reference to the corresponding law, if any, in force in that area.

3. Records of National Importance

(a) On and from the commencement of this Act, all records belonging to or in possession of any public archival repository shall be considered to be records of National Importance.

(b) All records of enduring value and/or of historical importance in the custody of the autonomous bodies public undertakings, corporate bodies and established business houses of all-India importance religious institutions, registered organisations etc., other than those owned or controlled by Government shall be similarly considered to be records of national importance.

(c) In addition, the Central Government may, from time to time, by notification in the Official Gazettee specify such other records as are considered by Government to be of national importance on account of their historical, sentimental, or aesthetic value to be records of national importance.

Explanation. The broad categories of organisations envisaged under Sub-clause (b) above, are: Supreme Court, High Courts, Bar Libraries, local bodies public corporations, Chamber of Commerce, Political organisations of all-India character, industrial and commercial organisations of all-India importance banks, important religious foundations, Universities (more than 25 years old), Colleges (at least 75 years old) etc.

Sub-Section (c) will include public leaders, eminent persons in various spheres of activities, retired high officials, important collections and libraries of individuals personal collections of princely houses zamindars, taluqdars etc. minority institutions (linguistic, religious, educational etc.) tribal organisations, social, cultural and economic organisations, other than those owned or controlled by the Government.

4. Regulations of export trade in records of national importance less than 75 years old

(1) On and from the commencement of this Act, it shall not be lawful for any person, other than the Central Government or any authority or agency authorised by the Central Government in this behalf, to export any records of national importance which may be less than 75 years old.

(2) Whenever the Central Government or any authority or agency referred to in sub-section (1) intends to export any record such export shall be made only under and in accordance with the terms and conditions of a permit issued for the purpose by such authority as may be prescribed.

5. The Customs Act, 1962 shall have effect in relation to all records, the export of which by any person (other than the Central Government or any authority or agency authorized by the Central Government) is prohibited under section 4 save in so far as that Act is inconsistent with the Provisions of this Act and except that (notwithstanding anything contained in Section 125 of that Act) any confiscation authorized under that Act shall be made unless the Central Government on an application made to it in this behalf, otherwise directs.

6. Regulation for weeding of records:

Notwithstanding the provisions contained in any law, it shall not be lawful for any archives repository or institution as stipulated in Sub-Sections (a), (b) and (c) of Section 3, to weed out any record or destroy them except in accordance with the rules made in this behalf from time to time.

7. Regulation for licensing of records:

On and from the expiry of a period of two months of the commencement of this Act, no person shall himself or by any other person on his behalf, carry on the business of selling or offering to sell any record, document, manuscript etc., as defined under Section 3, except under and in accordance with the terms and conditions of a licence granted under Section 10.

8. The Central Government may, by notified orders, -

(a) appoint such persons being gazetted officers of Government, as it thinks fit, to be licensing officers for the purpose of this Act;

(b) define the limits of the area within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

9. (1) Any person desiring to carry on, himself or by any other person on his behalf, the business of selling or offering to sell any record, documents, manuscripts etc., may make an application for the grant of a licence to the licensing officer having jurisdiction.

(2) Every application under sub-section (1) shall be made in such form and shall contain in such particulars as may be prescribed.

10. (1) On receipt of an application for the grant of a licence under section 9, the licensing officer may, after holding such inquiry as he deems fit grant a licence to the applicant having regard to the following factors, namely:-

(a) the experience of the applicant with respect to trade in records, documents, manuscripts etc.;

(b) the village, town or city where the applicant intends to carry on business;

(c) the number of persons already engaged in the business of selling, or offering for sale of, records etc. in the said village, town or city, and

(d) Such other factors as may be prescribed:

Provided that no licence shall be granted to the applicant if he is convicted of an offence punishable under the Antiquities (Export Control) Act, 1947 (31 of 1947) unless a period of ten years has elapsed since the date of the conviction.

(2) Every licence granted under this section shall be on payment of such fees as may be prescribed.

(3) Every licence granted under this section shall be for such period, subject to such conditions and in such form and shall contain such particulars, as may be prescribed.

(4) No application for the grant of a licence made under section 9 shall be rejected unless the applicant has been given a reasonable opportunity of being heard in the matter.

11. (1) A licence granted under section 10 may, on an application made by the licensee, be renewed by the licensing officer for such period and on payment of such fees as may be prescribed.

(2) No application made under this section shall be rejected unless the applicant has been given a reasonable opportunity of being heard in the matter.

12. (1) Every holder of a licence granted under section 10 or renewed under section 11 shall maintain such records, and registers, in such manner and containing such particulars, as may be prescribed.

(2) Every record, and register maintained under sub-section (1) shall, at all reasonable times, be open to inspection by the licensing officer or by any other gazetted officer of Government authorised in writing by the licensing officer in this behalf.

13. (1) If the licensing officer is satisfied either on a reference made to him in this behalf or otherwise that -

(a) a licence granted under section 10 has been obtained by misrepresentation of an essential fact, or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence.

(2) Subject to any rules that may be made in this behalf, the licensing officer may also vary or amend a licence granted under section 10.

14. Notwithstanding anything contained in section 7, any person whose licence has been revoked under section 13 may, after making a declaration before the licensing officer, within such period, in such form and in such manner, as may be prescribed, of all the records document etc., in his ownership, control or possession immediately before such revocation, sell such records etc., to any other person holding a valid licence under this Act:

Provided that no such record shall be sold after the expiry of a period of six months from the date of revocation of the licence.

15. (1) If the Central Government is of opinion that with a view to conserving records, documents, manuscripts etc., or in the public interest it is necessary or expedient so to do, it may, by notification in the Official Gazettee, declare that with effect on and from such date as may be specified in the notification, the Central Government or any authority or agency authorised by the Central Government in this behalf shall alone be entitled to carry on the business of selling or offering for sale of such records.

(2) On the issue of a notification under sub-section (1), -

(a) it shall not be lawful for any person, authority or agency, other than the Central Government or any authority or agency authorized by the Central Government, to carry on the business of selling or offering for sale any record, document, manuscript etc., on and from the date specified therein;

(b) the provisions of this Act, in so far as they relate to the licensing of persons carrying on the business of selling or offering for sale of records etc., shall cease to have effect except as respects things done or omitted to be done before such cesser of operation and section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply upon such cesser of operation as if those provisions had been repealed by a Central Act:

Provided that every licence granted under section 10 and in force on the date aforesaid shall, notwithstanding that the period specified therein has not expired, cease to be in force.

(3) Every person whose licence has ceased to be in force under the proviso to clause (b) of sub-section (2) shall, within such period, in such form and in such manner as may be prescribed, make a declaration before the licensing officer of all the records etc., in his ownership, control or possession immediately before the date specified in the notification issued under sub-section (1).

16. Registration of Records

(1) The Central Government may from time to time by notification in the Official Gazette, specify those categories of records of national importance which shall be registered under this Act.

(2) In specifying categories of records in sub-section (1) above, the Central Government shall have regard to the following factors, namely:-

i) the need to preserve records within India as important source materials for the history of the country;

ii) the need to preserve records valuable to the nation from the aesthetic or sentimental point of view; and

iii) such other factors as will, or are likely to, contribute to the conservation and safeguarding of the cultural heritage of India.

(3) Every person who owns, or is in possession of any records of national importance as may be specified under sub-section (1) above, shall register such records and documents before the Registering Officer mentioned under section 17 of this Act.

(a) in the case of a person who owns or possesses such records on the date of issue of such notification, within three months of such date; and

(b) in the case of any other person, within fifteen days of the date on which he takes the ownership, or possession either by legal succession, or by transfer of ownership of such records, and obtain a certificate in token of such registration;

Provided that the period of three months laid down in section 16(3)(a) may be extended by another three months by the Registering Officer, if considered necessary.

17. The Central Government may, by notified order -

(a) appoint such person or persons, as it thinks fit, to be Registering Officer(s) for the purpose of this Act, and

(b) define the limits of the area within which a Registering Officer shall exercise his authority under this Act.

18. (1) Every person required to register any record of national importance under Section 16, shall make an apolication to the Registering Officer giving such information and particulars as may be prescribed, for the grant of a certificate of registration.

(2) The Registering Officer may after holding such enquiry as he considers necessary grant a certificate of registration to an applicant containing such particulars and in such form as may be prescribed provided that a Registering Officer shall have power to make copies photographic or otherwise, of such records if he considers it necessary.

(3) No application made under this section shall be rejected unless the applicant has been given a reasonable opportunity of being heard in the matter.

19. Whenever any person transfers the ownership, control or possession of any record specified in any notification issued under sub-section (1) of section 18 such person shall intimate, within such period and in such form as may be prescribed, the fact of such transfer to the Registering Officer.

20. Nothing in sections 16, 17 and 18 shall apply to any record of national importance kept in an archives repository office, library, museum, educational or cultural institutions which is owned, controlled or managed by Government.

21. Compulsory Acquisition by Government

(1) If the Central Government is of opinion that it is desirable to preserve any record of national importance which is less than 75 years old in a public institution, that Government may make an order for the compulsory acquisition of such record.

(2) On the making of an order under sub-section (1) the Collector of the district in which such record is kept shall give notice to the owner thereof, intimating him of the decision of the Central Government to acquire the same and it shall be lawful for the Collector to take possession of such record, for which purpose the Collector may use such forces as may be necessary.

(3) Where the owner of any record, the possession of which has been taken over by the Collector under sub-section (2), objects to the taking over such possession, he may, within a period of thirty days from the date on which such possession was taken over, make a representation to the Central Government putting forth his objections:

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the owner of such records was prevented by sufficient cause from making the representation in time.

(4) On receipt of any representation under sub-section (3) the Central Government, after making such enquiry - as it deems fit and after giving to the objector an opportunity of being heard in the matter, shall within a period of ninety days from the date of receipt of the representation, either rescind or confirm the order made by it under sub-section (1).

(5) Where any order made by the Central Government under sub-section (1) is rescinded under sub-section (4), the record shall be returned to the owner thereof without delay and at the expense of the Central Government.

(6) Where the order made by the Central Government under sub-section (1) is confirmed under sub-section (4), the record shall vest in the Central Government with effect from the date on which the possession thereof has been taken over by the Collector under sub-section (2).

(7) The power of compulsory acquisition conferred by this section shall not extend to any record, used for bona fide religious observances.

Explanation - In this section, "public institution" means any institution referred to in sub-sections (a) and (b) of section 3, which is open to the use of the public whether on payment of fees or not, or whether it is actually used by the public or not.

22. Payment of Compensation

(1) Where a record of national importance which is less than 75 years old is compulsorily acquired under section 21, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say. -

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is or has been or is qualified for appointment as a Judge of a High Court;

(c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the record compulsorily acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(d) at the commencement of the proceedings before the arbitrator the Central Government and the person to be compensated shall state what, in their respective opinion, is a fair amount of compensation;

(e) the arbitrator shall after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid and in making the award he shall have regard to the circumstances of such case and the provisions of sub-section (2).

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act 1940 shall apply to arbitration under this section.

(2) While determining the compensation under sub-section (1) above the arbitrator shall have regard to the following factors:

(i) the date or period to which a record or document belongs;

(ii) the historical, cultural, artistic, sentimental or aesthetic importance of the records; and

(iii) such other matters as are relevant to the dispute.

23. Appeals against the decisions of Licensing and Registering Officer

Any person aggrieved by decision of the Licensing Officer under section 13 by a decision of a Registering Officer under section 18 may, within 30 days from the date on which the decision is communicated to him prefer an appeal to such authority as may be prescribed.

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

24. Appeal against award of arbitrator

Any person aggrieved by an award of the arbitrator made under section 22 may within thirty days from the date on which the award is communicated to him prefer an appeal to the High Court within whose jurisdiction he resides.

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by a sufficient cause from filing the appeal in time.

25. (1) Any person, being an officer of Government authorised in this behalf by the Central Government may with a view to securing compliance with the provisions of this Act or to satisfying himself that the provisions of this Act have been complied with

(i) enter and search any place,

(ii) seize any record of national importance in respect of which he suspects that any provision of this Act has been, is being or is about to be, contravened and thereafter take all measures necessary for securing the production of the record so seized in a court and for its safe custody, pending such production.

(2) The provisions of section 102 and 103 of the Code of Criminal Procedure, 1898 relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

26. If any question arises whether a record is or is not of national importance for the purposes of this Act, it shall be referred to the Director of Archives, National Archives of India or to an officer not below the rank of a Deputy Director in the National Archives of India, and the decision of the Director of Archives, National Archives of India or such officer as the case may be, on such question shall be final.

27. Penalty

(1) If any person himself or by any other person on his behalf, exports or attempts to export or wil-fully destroys or attempts to destroy any record in contravention of section 4 he shall, without prejudice to any confiscation or penalty to which he may be liable under the provision of the Customs Act, 1962 as applied by section 5, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine.

(2) If any person contravenes the provision of section 18 or section 19 he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both and the antiquity in respect of which the offence has been committed shall be liable to confiscation.

(3) If any person prevents any officer authorized by the Central Government under sub-section (1) of section 23 from entering into or searching any place under that sub-section, he shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

28. Cognizance of offences

(1) No prosecution for an offence under sub-section (1) of a section 27 shall be instituted except by or with the sanction of such officer of Government as may be prescribed in this behalf.

(2) No court shall take cognizance of an offence punishable under sub-section (2) or sub-section (3) of section 27 except upon complaint in writing made by an officer generally or specially authorized in his behalf by the Central Government.

(3) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under this Act.

29. Magistrate's power to impose enhanced penalties

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or any Magistrate of the First Class to

pass any sentence under this Act in excess of his power under section 32 of the said Code.

30. Offences by companies

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed/in charge of, or was responsible to, the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals as mentioned in sub-section (b) and (c) of section 3; and

(b) "director" in relation to a firm means a partner in the firm.

31. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or is intended to be done under this Act.

32. Application of other laws not barred

The provisions of this Act shall be in addition to and not in derogation of the provisions of the Antiquities and Art Treasures Act 1972, or any other law for the time being in force.

33. Power to make rules

(1) The Central Government may by notification in the Official Gazette, make rules for the purpose of giving effect to the provision of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the authority for issue of permit under sub-section (2) of section 4;

(b) The information and particulars to accompany an application to the Registering Officer for the grant of a certificate of registration under sub-section (1) of section 18 and the form of and the particulars which a certificate of registration granted under sub-section (2) of section 18 shall contain.

(c) the form in which an application for the grant of and licence made under sub-section (1) of section 9 and the particulars which such application shall contain;

(d) the factors to which regard may be made had while granting a licence under sub-section (1) of section 10;

(e) the fees on payment of which, the period for which, the conditions subjects to which and the form in which a licence may be granted under sub-section (1) of section 10 and the particulars which such licence shall contain;

(f) the fees on payment of which the period for which a licence may be renewed under sub-section (1) of section 11;

(g) the authority to which the appeal may be preferred under section 13; and

(h) any other matter which has to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

ANNEXURE

Conspectus of action taken on previous Resolutions and Recommendations of the Indian Historical Records Commission

(38th to 43rd Sessions)